

Carin A. Marney, WSBA No. 25132
Theodore A. Sheffield, WSBA No 35874
LANE POWELL PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101-2338
Telephone: 206.223.7000
Facsimile: 206.223.7107

Attorneys for Defendants Life Care
Centers of America, Inc. and Kennewick
Medical Investors, LLC, d/b/a Life Care
Center of Kennewick

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ESTATE OF MARGARETTE E.
ECKSTEIN, by and through its
Personal Representative, PATRICIA K.
LUCKEY,

Plaintiff,

v.

LIFE CARE CENTERS OF
AMERICA, INC., a Tennessee
corporation; LIFE CARE CENTER OF
KENNEWICK, a Washington Nursing
Home; KENNEWICK MEDICAL
INVESTORS, LLC, a Delaware
corporation; JOHN DOES 1-10
inclusively, jointly and severally liable,

Defendants.

NO. CV-09-5022-LRS

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT FOR
NEGLECT OF A VULNERABLE
ADULT, CORPORATE
NEGLIGENCE, AND WRONGFUL
DEATH

COME NOW Defendants Life Care Centers of America, Inc. and
Kennewick Medical Investors, LLC, d/b/a Life Care Center of Kennewick
(collectively referred to as "Defendants"), by and through their counsel of
record, Lane Powell PC, and in answer to Plaintiff's Complaint for Neglect of a

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR
NEGLECT OF A VULNERABLE ADULT, CORPORATE
NEGLIGENCE, AND WRONGFUL DEATH - 1

119707.0016/1693657.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 Vulnerable Adult, Corporate Negligence, and Wrongful Death (“Complaint”),
2 admit, deny and allege as follows:

3 **I. PARTIES**

4 1.1 By way of answer to paragraph 1.1, Defendants admit the
5 allegations therein.
6

7 1.2 By way of answer to paragraph 1.2, Defendants lack sufficient
8 information to admit or deny the allegations and therefore deny the same.

9 1.3 By way of answer to paragraph 1.3, Defendants admit that Life
10 Care Center of Kennewick is a state licensed and Medicaid/Medicare federally
11 certified skilled nursing facility located in Benton County, Washington. Except
12 as specifically admitted, the remaining allegations are denied.
13

14 1.4 By way of answer to paragraph 1.4, Defendants admit that
15 Kennewick Medical Investors, LLC is the holder of the skilled nursing facility
16 license and federal Medicaid/Medicare certifications for Life Care Center of
17 Kennewick. Except as specifically admitted, the remaining allegations are
18 denied.
19

20 1.5 By way of answer to paragraph 1.5, Defendants admit that Life
21 Care Center of America, Inc. is a Tennessee corporation doing business in
22 Washington State. Defendants further admit that Life Care Center of America,
23 Inc. was and remains the manager of Life Care Center of Kennewick. Except as
24 specifically admitted, the remaining allegations are denied.
25
26

II. JURISDICTION AND VENUE

2.1 By way of answer to paragraph 2.1, Plaintiff's allegations call for a legal conclusion to which no answer is required. By way of further answer to paragraph 2.1, the documents attached as Exhibit A to the Complaint speak for themselves, and no answer is required.

2.2 By way of answer to paragraph 2.2, Plaintiff's allegations call for a legal conclusion to which no answer is required. By way of further answer to paragraph 2.2, the documents attached as Exhibit B to the Complaint speak for themselves, and no answer is required.

2.3 By way of answer to paragraph 2.3, Defendants lack sufficient information to admit or deny the allegations and therefore deny the same.

2.4 By way of answer to paragraph 2.4, Plaintiff's allegations call for a legal conclusion to which no answer is required. By way of further answer to paragraph 2.4, Plaintiff's allegations are now moot, as this matter has been removed to the United States District Court for the Eastern District of Washington.

III. SUMMARY OF FACTS

3.1 By way of answer to paragraph 3.1, Defendants admit that on or about November 12, 2004, Margarete Eckstein ("Eckstein") was admitted to Life Care Center of Kennewick. The remaining allegations call for legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny the allegations therein.

1 3.2 By way of answer to paragraph 3.2, Defendants admit that
2 Eckstein was admitted to Life Care Center of Kennewick with multiple
3 diagnoses, in addition to the diagnoses identified in paragraph 3.2. Defendants
4 lack sufficient information to admit or deny the remaining allegations and
5 therefore deny the same.
6

7 3.3 By way of answer to paragraph 3.3, Defendants deny the
8 allegations therein.

9 3.4 By way of answer to paragraph 3.4, Defendants lack sufficient
10 information to admit or deny the allegations and therefore deny the same.
11 Defendants specifically deny the allegations to the extent they allege neglect
12 and/or negligence.
13

14 3.5 By way of answer to paragraph 3.5, Defendants lack sufficient
15 information to admit or deny the allegations and therefore deny the same.
16 Defendants specifically deny the allegations to the extent they allege neglect
17 and/or negligence.
18

19 3.6 By way of answer to paragraph 3.6, Defendants lack sufficient
20 information to admit or deny the allegations and therefore deny the same.
21 Defendants specifically deny the allegations to the extent they allege neglect
22 and/or negligence.
23

24 3.7 By way of answer to paragraph 3.7, Defendants deny the
25 allegations therein.
26

1 3.8 By way of answer to paragraph 3.8, Defendants deny the
2 allegations therein.

3 3.9 By way of answer to paragraph 3.9, Defendants deny the
4 allegations therein.

5 3.10 By way of answer to paragraph 3.10, the Washington State
6 Department of Social & Health Services (DSHS) conducts periodic surveys of
7 skilled nursing facilities such as Life Care Center of Kennewick. These survey
8 results speak for themselves. Except as specifically admitted, the remaining
9 allegations are denied.
10

11 3.11 By way of answer to paragraph 3.11, Defendants admit DSHS
12 conducted a survey, which speaks for itself. Defendants lack sufficient
13 information to admit or deny the allegations regarding Eckstein's care after
14 leaving Life Care and therefore deny the same. Except as specifically admitted,
15 the remaining allegations are denied.
16

17 **IV. CAUSES OF ACTION**

18 **A. Neglect of a Vulnerable Adult, RCW 74.34 et seq.**

19 4.1 By way of answer to paragraph 4.1, Defendants reassert their
20 answers to paragraphs 3.1 through 3.11 above.

21 4.2 By way of answer to paragraph 4.2, to the extent these allegations
22 call for a legal conclusion, no answer is required. To the extent an answer is
23 deemed required, Defendants deny the allegations therein. Defendants
24
25
26

1 specifically deny the allegations to the extent they allege neglect and all
2 remaining allegations therein.

3 4.3 By way of answer to paragraph 4.3, Defendants admit that
4 Kennewick Medical Investors, LLC is the holder of the skilled nursing facility
5 license and federal Medicaid/Medicare certifications for Life Care Center of
6 Kennewick. To the extent these allegations call for a legal conclusion, no
7 answer is required. To the extent an answer is deemed required, Defendants
8 deny the allegations therein.

9 4.4 By way of answer to paragraph 4.4, Defendants admit that Life
10 Care Center of America, Inc. is the manager of Life Care Center of Kennewick.
11 To the extent these allegations call for a legal conclusion, no answer is required.
12 To the extent an answer is deemed required, Defendants deny the allegations
13 therein.

14 **B. Corporate Negligence, RCW 7.70**

15 4.5 By way of answer to paragraph 4.5, Defendants reassert their
16 answers to paragraphs 3.1 through 3.11 and 4.2 through 4.4 above.

17 4.6 By way of answer to paragraph 4.6, to the extent these allegations
18 call for a legal conclusion, no answer is required. To the extent an answer is
19 deemed required, Defendants deny the allegations therein. Defendants
20 specifically deny allegations of negligence and/or causation and all remaining
21 allegations therein.
22
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1 4.7 By way of answer to paragraph 4.7, to the extent these allegations
2 call for a legal conclusion, no answer is required. To the extent an answer is
3 deemed required, Defendants deny the allegations therein. Defendants
4 specifically deny allegations of negligence and/or causation and all remaining
5 allegations therein.
6

7 4.8 By way of answer to paragraph 4.8, Defendants admit Life Care
8 Centers of America, Inc. was the manager of Life Care Center of Kennewick.
9 To the extent these allegations call for a legal conclusion, no answer is required.
10 To the extent an answer is deemed required, Defendants deny the allegations
11 therein. Defendants specifically deny allegations of negligence and/or causation
12 and all remaining allegations therein.
13

14 **C. Wrongful Death**

15 4.9 By way of answer to paragraph 4.9, Defendants reassert their
16 answers to paragraphs 3.1 through 3.11 and 4.2 through 4.8 above.

17 4.10 By way of answer to paragraph 4.10, Defendants deny the
18 allegations therein.
19

20 4.11 By way of answer to paragraph 4.11, Defendants deny the
21 allegations therein.

22 4.12 By way of answer to paragraph 4.12, Defendants deny the
23 allegations therein.

24 4.13 By way of answer to paragraph 4.13, Defendants deny the
25 allegations therein.
26

1 **V. LIMITED PHYSICIAN/PATIENT WAIVER**

2 5.1 By way of answer to paragraph 5.1, this paragraph does not contain
3 any allegations that require a response.
4

5 **VI. PRAYER FOR RELIEF**

6 By way of answer to Plaintiff's prayer for relief, Defendants deny that
7 Plaintiff is entitled to any relief whatsoever, including, but not limited to, the
8 relief requested by Plaintiff in paragraphs 1-6 of the prayer for relief.
9

10 **AFFIRMATIVE DEFENSES**

11 Discovery and investigation may reveal that one or more of the following
12 affirmative defenses should be available to Defendants in this matter.
13 Defendants assert said affirmative defenses in order to preserve the right to
14 assert them. Upon completion of discovery, and if the facts warrant, Defendants
15 may withdraw any of these defenses as may be appropriate. Further, Defendants
16 reserve the right to amend this Answer to assert additional defenses as discovery
17 proceeds. Thus, by way of further answering, Defendants allege their
18 affirmative defenses as follows:
19

20 1. Plaintiff has failed to state a claim upon which relief may be
21 granted.
22

23 2. Plaintiff's Complaint fails to state a cause of action against each
24 and every defendant.
25
26

1 3. Plaintiff's claims against each and every Defendant are subject to a
2 Voluntary Agreement for Arbitration, which is attached hereto as Exhibit 1.
3 Thus, this case should be stayed and the case compelled to arbitration.

4 4. Plaintiff's claims are barred in part or in whole by the applicable
5 statute of limitations.
6

7 5. Plaintiff's damages, if any, were proximately caused by the fault of
8 others, beyond the direction, supervision or control of Defendants.

9 6. Plaintiff's alleged damages were proximately caused by a prior
10 injury, incident, condition, or event beyond the direction, supervision or control
11 of Defendants.

12 7. Plaintiff's damages, if any, were proximately caused by
13 unavoidable consequences, acts or omissions beyond the direction, supervision
14 or control of Defendants.
15

16 8. To the extent Plaintiff suffered damages, recovery must be reduced
17 and/or barred by Plaintiff's failure to mitigate said damages.

18 9. Eckstein's injuries, if any, were the direct and proximate result of
19 her own negligence and/or intentional conduct, which negligence, intent and/or
20 conduct will serve to defeat or reduce recovery at trial in this matter.
21

22 10. Defendants reserve the right to amend this Answer and assert
23 additional affirmative defenses pending further discovery.
24
25
26

1 WHEREFORE, having fully answered Plaintiff's Complaint and asserted
2 affirmative defenses, and having reserved their right to assert additional
3 affirmative defenses as discovery warrants, Defendants pray for relief as
4 follows:

5 1. That the Court enter an Order staying this case and compel
6 arbitration consistent with the parties' Voluntary Agreement to Arbitrate;

7 2. That this case be dismissed with prejudice;

8 3. That Defendants be awarded their costs in defending this matter
9 including a sum for reasonable attorneys' fees; and
10

11 4. That this Court grant such other relief as it may deem equitable and
12 appropriate.
13

14 DATED: March 27, 2009
15

16 LANE POWELL PC
17

18 By /s/ Carin A. Marney

19 Carin A. Marney, WSBA No. 25132
20 Theodore A. Sheffield, WSBA No. 35874
21 Attorneys for Defendants Life Care Centers
22 of America, Inc. and Kennewick Medical
23 Investors LLC, d/b/a Life Care Center of
24 Kennewick
25
26

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2009, I caused to be served a copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR NEGLIGENCE, AND WRONGFUL DEATH** on the following person in the manner indicated below at the following address:

Mr. Jeff B. Crollard
Crollard Kahn PC
200 - 2nd Avenue W
Seattle, WA 98118-4204

☐ by CM/ECF
☒ by **Electronic Mail**
☐ by **Facsimile Transmission**
☐ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**


Patricia King

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR
NEGLECT OF A VULNERABLE ADULT, CORPORATE
NEGLIGENCE, AND WRONGFUL DEATH - 11

119707.0016/1694943.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

Washington

VOLUNTARY AGREEMENT FOR ARBITRATION

PLEASE READ CAREFULLY

Under Washington law two or more parties may agree in writing for the settlement by arbitration of any dispute arising between them. The following is an agreement to arbitrate any dispute that might arise between the Resident and the Facility and/or Life Care Centers of America.

I. EXPLANATION

Arbitration is a method of resolving disputes without the substantial time and expense of using the judicial system. An arbitration hearing takes only weeks or months to schedule, while civil litigation generally takes years to complete. By avoiding the judicial system, many costs are eliminated. There are charges and fees involved in arbitration, but an arbitration hearing will almost always resolve a dispute sooner and at less cost than a trial. It is important to understand, however, that there is only a limited right to appeal an arbitration award. Unless there is evidence of fraud on the part of the arbitrator(s) or a serious procedural defect, an arbitration award will be final. Of course, the Facility also agrees to be bound by the arbitrators' decision. The following arbitration agreement is optional. By signing it, you will give up your constitutional right to a jury or court trial and you agree that any dispute between you and the facility will be subject to arbitration.

II. AGREEMENT

The following is an agreement (the "Arbitration Agreement") to arbitrate any dispute that might arise between Margaret E. Eckstein (the "Resident") and Life Care Centers of America (the "Facility"). ("Facility" includes the particular facility where the Resident resides and Life Care Centers of America, Inc.) In consideration of the benefits of the use of arbitration in the efficient resolution of conflicts and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties hereto, intending to be legally bound, the parties hereby agree as follows:

The parties agree that they shall submit to binding arbitration all disputes against each other and their agents, partners, officers, directors, shareholders, owners, employees, representatives, members, fiduciaries, governing bodies, subsidiaries, parent companies, affiliates, insurers, attorneys, predecessors, successors and assigns, or any of them, and all persons, entities or corporations with whom any of the former have been, are now or may be affiliated, arising out of or in any way related or connected to the Resident's stay and care provided at the Facility, including but not limited to any disputes concerning alleged personal injury to the Resident caused by improper or inadequate care, including allegations of medical malpractice; any disputes concerning whether any statutory provisions relating to the Resident's rights under Washington law were violated; and any other dispute under Washington or federal law based on contract, tort, or statute.

An arbitration hearing arising under this Arbitration Agreement shall be held in the county where the Facility is located before a board of three arbitrators, selected from the American Arbitration Association ("AAA"); one chosen by each side in the dispute with the third to be chosen by the two arbitrators previously chosen. In conducting the hearing and all other proceedings relative to the arbitration of the claim(s), the arbitrators shall apply the applicable rules of procedure of the AAA. If there is a conflict between the procedural rules of the AAA and a mandatory provision of Washington law governing arbitration, the state law provision shall apply. In rendering a decision on the merits of the claims, the arbitrators shall apply the substantive law of Washington.

Each party may be represented by counsel in connection with all arbitration proceedings and each party agrees to bear their own attorney fees and costs. Payment of any other awards, fees and costs associated with these arbitration proceedings shall be determined by the panel of arbitrators.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident, shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or received by the Resident, and is not presented in the arbitration proceeding.

It is the intention of the Facility and the Resident that this Arbitration Agreement shall inure to the benefit of and bind the Facility, its agents, partners, officers, directors, shareholders, owners, employees, representatives, members, fiduciaries, governing bodies, subsidiaries, parent companies, affiliates, insurers, attorneys, predecessors, successors and assigns, or any of them, and all persons, entities or corporations with whom any of the former have been, are now or may be affiliated; and the Resident, his/her successors, assigns, agents, insurers, heirs, trustees, and representatives, including the personal representative or executor of his or her estate; and his/her successors, assigns, agents, insurers, heirs, trustees, and representatives.

Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

III. ACKNOWLEDGEMENTS

The execution of this Arbitration Agreement is voluntary and is not a precondition to receiving medical treatment at or for admission to the Facility.

The Resident and/or Legal Representative understands that he/she has the right to consult with an attorney of his/her choice, prior to signing this Arbitration Agreement.

The Resident and/or Legal Representative understands, agrees to, and has received a copy of this Arbitration Agreement, and acknowledges that the terms have been explained to him/her, or his/her designee, by an agent of the Facility, and that he/she has had an opportunity to ask questions about this Arbitration Agreement.

Each party agrees to waive the right to a trial, before a judge or jury, for all disputes, including those at law or in equity, subject to binding arbitration under this Arbitration Agreement.

The Resident and/or Legal Representative understands that this Arbitration Agreement may be rescinded by giving written notice to the Facility within 10 days of its execution. If not rescinded within 10 days of its execution, this Arbitration Agreement shall remain in effect for all claims arising out of the Resident's stay at the Facility. If the acts underlying the dispute are committed prior to the revocation date, this Arbitration Agreement shall be binding with respect to said acts.

In the event that any portion of the Arbitration Agreement is determined to be invalid or unenforceable, the remainder of this Arbitration Agreement will be deemed to continue to be binding upon the parties hereto in the same manner as if the invalid or unenforceable provision were not a part of the Arbitration Agreement.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH OF THEM HAS READ THIS ARBITRATION AGREEMENT AND UNDERSTANDS THAT BY SIGNING THIS ARBITRATION AGREEMENT EACH HAS WAIVED HIS/HER RIGHT TO A TRIAL, BEFORE A JUDGE OR JURY, AND THAT EACH OF THEM VOLUNTARILY CONSENTS TO ALL OF THE TERMS OF THE ARBITRATION AGREEMENT.

Signature of Resident/Date

Eane D. Kinney 11-12-04
Signature of Legal Representative/Date

Marnet Norcross 11/12/04
Signature of Facility Representative/Date